



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

MAY 02 2007

REPLY TO THE ATTENTION OF

S-6J

Dr. Hannah J. McKinney, Mayor  
City of Kalamazoo  
Office of the Mayor  
241 W. South Street  
Kalamazoo, Michigan 49007-4796

US EPA RECORDS CENTER REGION 5



406969

Dear Mayor McKinney:

Thank you for your April 2, 2007, letter regarding the planned Time-Critical Removal Action ("TCRA") at the former Plainwell Impoundment in the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site. In your letter, you specifically requested a response to the City's concerns outlined in your letter. The response to these questions can be found in the enclosure to this letter.

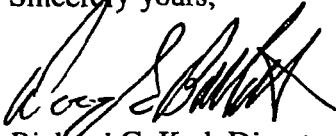
On April 25, 2007, the United States Environmental Protection Agency ("U.S. EPA") and the State of Michigan announced that Georgia-Pacific and Millennium Holdings had agreed not to send the PCB-contaminated material from the Plainwell Impoundment, to the Allied Paper Landfill ("Landfill") in 2007. Instead, material excavated during the 2007 construction season will be sent to permitted commercial landfills. This alternative disposal plan was proposed by the companies and agreed to by the U.S. EPA and the State of Michigan. No decision has been made regarding a disposal site or sites for material excavated during the 2008 construction season. However, U.S. EPA will solicit public input on future disposal plans before a final decision is made.

Although the disposal plan for 2007 has been revised, both U.S. EPA and the State of Michigan firmly believe the original plan to place Plainwell Impoundment materials at the Landfill is fully protective of human health and the environment and would have presented no negative impacts to the Kalamazoo community or the environment.

We are aware of the concerns of City of Kalamazoo officials and residents about disposal at the Landfill. We will ensure that the public is given an opportunity to provide input regarding disposal options for material removed in 2008. In the meantime, the time-critical cleanup work at the Plainwell Impoundment resumed on May 2, 2007.

Again, thank you for your letter. If you have any further questions, please contact me or Mr. Samuel Borries, the Superfund On-Scene Coordinator for this project at (312) 353-8360.

Sincerely yours,



*for* Richard C. Karl, Director  
Superfund Division

Enclosure

cc: Hon. Carl Levin  
Hon. Debbie Stabenow  
Hon. Fred Upton  
Hon. Jennifer M. Granholm  
Hon. Tom George  
Hon. Lorence Wenke  
Mike Cox, Michigan Attorney General  
Hon. Robert B. Jones  
Steven Chester, Director, MDEQ  
Jim Sygo, MDEQ  
Andy Hogarth, MDEQ  
Daria Devantier, MDEQ  
Paul Bucholtz, MDEQ

## **Enclosure**

As requested in your April 2, 2007 letter, the U.S. EPA responses to the specific concerns raised by the City are provided below.

**#1: U.S. EPA Failed To Consider The Effects of Depositing PCB-Contaminated Sediments Within The City Limits, Upgradient From A Municipal Well Field.** Groundwater monitoring has been occurring at the Landfill for a number of years. A key objective of the monitoring program has been to gather information on groundwater flow direction and the quality of the groundwater. There are 103 sample points (which are measured monthly) used for determining groundwater flow directions and 57 monitoring wells for evaluating groundwater quality at the site. U.S. EPA evaluated this information and concluded that there is no reason to believe there is any threat of contamination to the City of Kalamazoo's drinking water supply wells from the Landfill. Based on all available data, groundwater does not travel toward the City of Kalamazoo's drinking water supply wells. Instead, all of the groundwater flow information gathered to date indicates that groundwater underneath the Landfill travels toward and discharges to Portage Creek.

The majority of the Landfill has a groundwater collection system along Portage Creek in front of a sheet pile wall. Groundwater that is collected by this system is treated with carbon prior to discharging to the City of Kalamazoo's waste water treatment plant. No PCBs have been detected coming out of the groundwater capture zone and no PCBs have been detected after carbon treatment prior to discharging to the City of Kalamazoo's waste water treatment plant.

Although groundwater monitoring was conducted at the Landfill for over 10 years, the Potentially Responsible Parties ("PRPs") will collect additional groundwater samples in an effort to update the existing groundwater data. U.S. EPA and the State have a thorough understanding of groundwater conditions at the site and do not expect to see any significant differences between the existing and updated groundwater data. Generally, PCBs are not soluble and do not readily mobilize into groundwater, as evidenced by groundwater data collected and analyzed at the Allied Paper Landfill and the other on-site landfills.

**#2: There Is No Justification For Performing This Work As A Time Critical Removal Action.** The factors that U.S. EPA must consider when determining whether to initiate a TCRA are set forth at 40 C.F.R. § 300.415(b)(2). A TCRA is typically conducted when less than six months exists before on-site removal activity must begin. Based on a variety of data and information, U.S. EPA determined that it was necessary to conduct a TCRA at the Plainwell Impoundment. The data and information that U.S. EPA considered to make this determination includes:

- new data collected in 2006, which confirmed the presence of PCBs with concentrations > 50 parts per million ("ppm") with a maximum concentration of 220 ppm, in three localized hot spots in the river sediments;

- previously collected data that indicated that bank soils and floodplains contained areas with PCB concentrations > 50 ppm;
- information that demonstrated significant uncontrolled erosion is occurring at the Plainwell Impoundment that causes undercutting of contaminated banks which then fall into the river and contribute to sediment contamination; and
- the fact that the Plainwell Impoundment is the first, most upstream significant source of PCBs to the Kalamazoo River, and it is important to remove this material from the river as soon as possible to eliminate the most upstream source of PCBs to the River.

The 2006 data regarding mid-channel hot spots raised serious concerns at U.S. EPA and the Michigan Department of Environmental Quality. Before 2006, the PRPs had collected in-stream sediment data along “transects,” *i.e.* in a straight line from one river bank to another. Until 2006, PCB concentrations in mid-stream sediments appeared to be relatively and uniformly low. The new data indicated that there were “hot spots” of high PCB concentrations between the transects. During the settlement negotiations, the PRPs agreed to conduct the TCRA at the Plainwell Impoundment. Additionally, the PRPs agreed to evaluate whether performance of the removal action would be facilitated by removal of the Plainwell Dam. The Plainwell Dam is in poor condition, and the Michigan Department of Natural Resources, a party to the negotiations, is currently under an order to repair, replace or remove the dam, and prevent access by unauthorized persons. The agreement among Millennium Holdings, LLC, Georgia-Pacific, LLC, U.S. EPA and the State of Michigan was captured in a legal document called an Administrative Settlement Agreement and Order on Consent. U.S. EPA and the PRPs held settlement negotiations to reach the agreement, and the public does not participate in U.S. EPA’s settlement negotiations.

U.S. EPA’s regulations at 40 C.F.R. § 300.415(n) explain how U.S. EPA should interact with the community when a removal action is taken. U.S. EPA is following the requirements of the regulations and is committed to meeting with public officials and citizens to listen to concerns and respond appropriately. U.S. EPA will also solicit public input before a final decision is made regarding disposal options for material removed from the Plainwell Impoundment in 2008. Additionally, the public will have an opportunity to comment on the final cleanup action for the Allied Paper Landfill, as well as final cleanup decisions for other areas of the River, through the Superfund remedy selection process. U.S. EPA will not conduct TCRAs at the Kalamazoo River Superfund Site in the future unless there is data and information that supports a need to take another TCRA.

### **#3: U.S. EPA Completely Ignored Its Own Community Involvement Plan.**

U.S. EPA could have done a better job communicating with City of Kalamazoo officials and residents at the time U.S. EPA announced the outcome of the settlement negotiations including the decision to conduct a TCRA. Due to the nature of the negotiations, U.S. EPA was unable to seek public input or share the details of the settlement agreements any sooner than we could. U.S. EPA understands the frustration this has caused City of Kalamazoo officials and residents about not being part of the decision making process. Although the disposal plan in 2007 has been revised, U.S. EPA will ensure that the public is given an opportunity to provide input regarding disposal options for material removed in 2008.

Additionally, the public will have an opportunity to provide input before U.S. EPA makes a final cleanup decision at the Allied Paper Landfill, as well as for cleanup decisions at other areas of the River, through the Superfund remedy selection process. A final cleanup decision for the Landfill will be made in a Record of Decision ("ROD") after the Remedial Investigation/Feasibility Study ("RI/FS") Report is finalized and after U.S. EPA makes the Proposed Plan for cleanup available for public comment. U.S. EPA will consider all public comments before a final or "permanent" cleanup decision is made for the Allied Paper Landfill. The U.S. EPA is currently reviewing the RI Report for the Allied Paper Landfill, which was drafted by the State of Michigan. After the RI is finalized, the PRPs will draft the FS Report for U.S. EPA review and approval. U.S. EPA will then follow the process discussed above before U.S. EPA makes a final cleanup decision for the Landfill.

Recent community involvement activities include U.S. EPA participation in meetings with the Edison Neighborhood Association and the Kalamazoo Neighborhood Coalition. We are working with other neighborhood associations to meet with them at their convenience.

**#4: It Is Not Clear that the Allied Paper Landfill Meets the Substantive Requirements of TSCA.** When U.S. EPA conducts a response action at a Superfund site, it is required to evaluate federal and state regulations and standards that are applicable or relevant and appropriate requirements ("ARARs") to the cleanup action. The need to achieve or waive ARARs, however, differs for remedial actions and removal actions. Remedial actions must attain or waive ARARs. *See* 40 C.F.R. § 300.430(e)(9)((iii)(B). Removal actions must attain ARARs to the "extent practicable considering the exigencies of the situation...." *See* 40 C.F.R. § 300.415(j).

The TSCA chemical landfill requirements of 40 C.F.R. § 761.75 are not an ARAR for any response action at the Kalamazoo River Superfund Site. In 1999, U.S. EPA promulgated the PCB Remediation Waste Rule to address, in part, the disposal of large quantities of dredged material containing PCBs over 50 ppm. The new regulations regarding the disposal of PCB Remediation Waste are found at 40 C.F.R. § 761.61. This regulation creates a mechanism by which U.S. EPA may issue a risk-based disposal approval for PCB Remediation Wastes if it determines that the proposed disposal method does not pose an unreasonable risk of injury to health or the environment. The authority

to issue a risk-based disposal approval has been delegated from the U.S. EPA Region 5 Regional Administrator to the Director of the Superfund Division, subject to a requirement for the Director of the Superfund Division to consult with the Waste, Pesticides & Toxics Division. U.S. EPA Region 5 Superfund Division has procedures in place that it follows to consult with the Waste, Pesticides & Toxics Division when it considers whether to approve risk-based disposal of PCB Remediation Waste.

When U.S. EPA finalizes the Feasibility Study for the Allied Paper Landfill, it will identify 40 C.F.R. § 761.61(c) as an ARAR for the remedial action. The permanent remedy for the landfill will need to comply with the TSCA ARAR. U.S. EPA has already issued risk-based disposal approval for permanent disposal (i.e. consolidation and capping) of PCB wastes at the 12<sup>th</sup> Street and the A-Site Landfills, and for the disposal of a portion of the Bryant Mill Pond PCB residuals in the Allied Paper Landfill.

**#5: According to paragraph 21d. of the Administrative Settlement Agreement and Order of Consent for the Removal Action, the Respondents shall only send hazardous substances, pollutants, or contaminants from the Plainwell Impoundment Area to an off-site facility that compiles with the requirements of the statutory provision and regulation cited under this paragraph. For purposes of the Agreement, the Allied Operable Unit is not considered an "off-site" location. How can these types of regulations be waived when PCB sediments are being trucked into a dense urban neighborhood? Why would they be waived?** The provisions and regulations cited under Paragraph 21d. of the AOC are specific to materials that will be sent to an off-site waste management facility for disposal. The Allied Paper Landfill is one of four landfills that are part of the Allied Paper/Portage Creek/Kalamazoo River Superfund Site. These landfills are considered "on-site" landfills and therefore, are not subject to the specific provisions and regulations under Section 21 d. of the AOC. Before U.S. EPA can dispose materials at an on-site landfill such as the Allied Paper Landfill, U.S. EPA must make the determination that disposal of the materials does not present a threat to public health or the environment. Before the 2007 disposal plan was changed to the use of off-site permitted commercial facilities, U.S. EPA had already made the determination that disposal of the Plainwell Impoundment materials at the Allied Paper Landfill would not present a threat to public health or the environment.

**#6: What is being done to remediate and close the Allied Paper Landfill? The disposal of PCB sediments from the Plainwell Impoundment Area is described as a "temporary" solution, but what is the permanent solution?** The final or permanent cleanup decision at the Allied Paper Landfill has not yet been made. This Landfill is in the Remedial Investigation stage of the Superfund cleanup process. Under this process, an investigation of the nature and extent of contamination is conducted and cleanup options evaluated to address contamination present at the landfill. Results of the investigation and evaluation of cleanup options are presented in the RI/FS Report. U.S. EPA is currently reviewing the RI Report, which was drafted by the State of Michigan. After the RI is finalized, the PRPs will draft the Feasibility Study Report for U.S. EPA review and approval. After the RI/FS is finalized, U.S. EPA will follow the process

discussed in U.S. Response to Item #3 before U.S. EPA makes a *final* cleanup decision at the Landfill.



**OFFICE OF THE MAYOR**

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April 2, 2007

Richard Karl, Director  
Superfund Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Re: Allied Paper/Portage Creek/Kalamazoo River Superfund Site

Dear Mr. Karl:

I am writing on behalf of the citizens of the City of Kalamazoo, Michigan regarding Administrative Settlement Agreement And Order On Consent For Removal Action (the "Order") issued by U.S. EPA on February 21, 2007, permitting the placement of PCB-contaminated sediments from the Plainwell Impoundment Area into an existing, temporary facility at the Allied Paper Operable Unit #1 ("Allied Paper Landfill"). The Allied Paper Landfill is not only a Superfund Site and an unlicensed disposal area, but it is up gradient from the City's drinking water well field and situated in a low-income, primarily minority (African-American and Hispanic) neighborhood. The City was first informed of this Order after it was issued, and I can say that the response of our citizens and public officials has been nothing short of outrage.

**Summary of City's Position.** According to the February 2007 U.S. EPA Fact Sheet describing the work, "[s]ince November 2004, EPA has been involved in confidential discussions to resolve differences between the mediating parties that were delaying the cleanup and restoration of the Kalamazoo River site." Although it is understandable that settlement discussions occur behind closed doors, it is not acceptable for EPA to preclude the City from having an opportunity to provide comments on a plan to dispose of highly toxic PCB-contaminated sediments within the City limits. The method chosen by EPA to deprive the City of its right to comment – styling the removal as "time critical" – is particularly disturbing. The Order is not an emergency unilateral order but the end result of two-years of negotiations. Furthermore, the sediments that are the subject of the Order have been in the Kalamazoo River for more than 30 years and cannot possibly be construed as posing an emergency risk of migration, bio-uptake, or ingestion. By inappropriately characterizing this removal as time critical, EPA has subverted the Community Involvement Plan and foreclosed other opportunities for public comment and involvement. The City objects to being left out of the decision making process, it objects to imposing the burden of this cleanup on its low-income, minority citizens, and it objects to the PCB-contaminated sediments being placed in the unlicensed disposal area up gradient from a municipal wellfield.



**Discussion of City's Position.** Although EPA has agreed to meet with representatives of the City and MDEQ to discuss this situation, EPA has placed the City at an enormous disadvantage, forcing it to raise its concerns after the fact and in a short span of a few weeks before the work starts under the Order. The City has issued a FOIA request to EPA to review the Administrative Record for this Site, but EPA has not yet responded to that request. Moreover, the City has sought but still has not been provided with groundwater data that apparently has been collected in the vicinity of the Allied Paper Landfill. Once the City receives all of the pertinent data and reports, it will be able to provide more specific comments. Based on what it has seen thus far, the City raises the following concerns:

1. U.S. EPA Failed to Consider The Effects of Depositing the PCB-Contaminated Sediments Within The City Limits, Up gradient from a Municipal Well Field.

The City has seen nothing establishing that EPA considered the possible effects of placing PCB-contaminated sediments in an unlicensed disposal area up gradient from the City's well field. To the contrary, the City has learned that the Michigan Department of Environmental Quality ("MDEQ") Ground Water Quality Division was not consulted regarding the adverse effects the disposal of additional sediments in the Landfill may have on the quality of the City's municipal water supply. Indeed, MDEQ groundwater staff was only made aware of the issue because of concerns raised by the City.

Furthermore, the City has not seen any justification for selecting the Allied Paper Landfill as the disposal location for the PCB-laden sediments over other more appropriate disposal areas, such as a properly licensed TSCA landfill, or even the 12<sup>th</sup> Street Landfill, which is much closer to the Plainwell Impoundment and may not present the same well field risks or environmental justice issues present at the Allied Paper Landfill. Again, it is hard for the City to know what criteria EPA considered, if any, in selecting the Allied Paper Landfill because the City was completely left out of the decision-making process and has been forced to scramble to gather and analyze the Administrative Record and relevant site data and records.

2. There Is No Justification For Performing This Work As A Time Critical Removal Action.

According to the Order, the PRPs discharged PCBs into the Kalamazoo River from the mid-1950s to the early 1970s, *i.e.*, more than 30 years ago. Negotiations between the U.S. EPA and the PRPs regarding this very removal action have lasted more than two years. Given all the time that has passed, it is inconceivable that U.S. EPA can justify performing this remedy as a time critical removal action, which severely limits the City's opportunity for review and comment. The City has little choice but to conclude that EPA allowed the removal to be done on a time-critical basis purely as a bargaining concession to the Respondents and to prevent meaningful involvement by the City.

The February 14, 2007 Enforcement Action Memorandum that purports to justify EPA's decision to perform a time critical removal action is lacking in several respects. EPA's justification seems to be based on the potential threat of exposure to human health and the environment, but there is no discussion of the adverse health effects the removal action itself might cause, such as the suspension of PCB-contaminated sediments in the Kalamazoo River, the eroding of PCB-contaminated sediments in Allied Paper Landfill, and the migration of PCBs into the City's well field. Indeed, some of the justifications offered in the Action Memorandum itself seemed less than robust. For example, page 5 of the Memorandum states that, "[t]he PRPs concluded, primarily through visual observation, that the riverbanks were a source of ongoing

loading of exposed sediments (and therefore PCBs) to the river. The PRPs also identified, again primarily through visual observation, some of the mechanisms involved in such loading.” Given the importance of these issues, it would seem that something more than visual observation would be called for in deciding whether the riverbanks provide a sufficient new load of PCBs to justify a time critical removal action. It seems that EPA drafted the Memorandum merely to justify a decision that had already been made rather than to make a decision based on the data. If the removal action was truly “time critical,” U.S. EPA could have simply issued a Unilateral Administrative Order to the PRPs back in 2004.

3. U.S. EPA Completely Ignored Its Own Community Involvement Plan.

EPA published a Community Involvement Plan (the “Plan”) in December 2006, *i.e.*, during the same time period that it was holding confidential discussions with the PRPs to discuss proposals to remove sediments from the Plainwell Impoundment Area. Page 11 of the Plan notes that there are “[l]ots of trust issues” regarding the historical handling of the Kalamazoo River remediation. In order to address these trust issues, several important points were identified in the Community Involvement Section of the Plan, including:

- The need to ask the municipalities if they have a plan on how to answer their communities’ questions about the site.
- The need to include minorities, including the African-American and Hispanic communities, in outreach activities.
- The approach to public involvement is important.
- The need to make strong efforts to work with communities.
- The need to make decisions that are based on local conditions versus national conditions.

These elements of the Plan were completely ignored and circumvented in favor of pursuing an unjustified time-critical removal action, thereby undermining the City’s ability to become involved in the decision-making process. Based on the reaction to the Order throughout the community, the “trust issues” in the City over the remediation of the site have only intensified.

4. It Is Not Clear that the Allied Paper Landfill Meets the Substantive Requirements of TSCA.

Because the Allied Paper Landfill is part of the Allied Paper/Portage Creek/Kalamazoo River Superfund Site, a TSCA permit is not required for on-site disposal of PCBs. However, the substantive requirements of TSCA must still be met. Those requirements are described in 40 CFR § 761.75. Again, although EPA has placed the City at a severe information disadvantage, a review of the § 761.75 requirements raises some obvious questions:

- Are the area soils relatively impermeable, as required by § 761.75(b)(1)?
- Are synthetic membrane liners required and in place? (*See* § 761.75(b)(2).)
- Is the bottom of the landfill above the historical high groundwater table, as required by § 761.75(b)(3)?

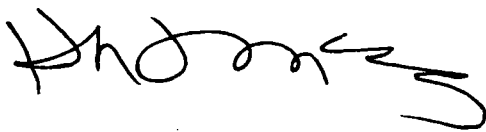
- Is there a hydraulic connection between the landfill and any standing or flowing surface water, as prohibited by § 761.75(b)(3)?
- Does the landfill have appropriate monitoring wells and leachate collection, as required by § 761.75(b)(3)?

On page 16 of the Administrative Settlement Agreement and Order of Consent for Removal Action #C863 in section 21, d. it states "Respondents shall obtain U.S. EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA .... Respondents shall only send hazardous substances, pollutants, or contaminants from the Plainwell Impoundment Area to an off-Site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence. For purposes of this Agreement, the Allied Operative Unit is not considered an "off-Site" location. "How can these types of regulations be waived when PCB sediments are being trucked into a dense urban neighborhood? Why would they be waived?

These are just some of the issues that need to be addressed before allowing more PCB-laden sediments to be disposed of at the Allied Paper Landfill. Indeed, the fact that the Allied Paper Landfill is itself a Superfund Site raises broader, equally important questions: What is being done to remediate and close the Allied Paper Landfill site? The disposal of PCB sediments from the Plainwell Impoundment Area is described as a "temporary" solution, but what is the permanent solution?

We hope that the foregoing helps EPA understand the depth and intensity of the City's concerns over the sudden issuance of this Order. The City appreciates EPA's willingness to meet with the City and MDEQ, but the City expects EPA to propose concrete actions that will allow the City a meaningful opportunity to provide comments and to consider those comments in good faith before any removal occurs.

Sincerely,



Dr. Hannah J. McKinney  
Mayor, City of Kalamazoo

cc: Hon. Carl Levin  
Hon. Debbie Stabenow  
Hon. Fred Upton  
Hon. Jennifer M. Granholm  
Hon. Tom George  
Hon. Lorence Wenke  
Hon. Robert B. Jones  
Mike Cox, Michigan Attorney General  
Mary Gage, U.S. EPA  
Levester Spearman, U.S. EPA  
Steven E. Chester, MDEQ

## **ORC Answers to Items 2 and 4 in the Mayor's letter:**

### **#2: There Is No Justification For Performing This Work As A Time Critical Removal Action.**

**Answer:** The factors that U.S. EPA must consider when determining whether to initiate a time-critical removal action (TCRA) are set forth at 40 C.F.R. § 300.415(b)(2). A TCRA is typically conducted when less than six months exists before on-site removal activity must begin. Based on a variety of data and information, U.S. EPA determined that it was necessary to conduct a TCRA at the Plainwell Impoundment. The data and information that U.S. EPA considered to make this determination includes:

- new data collected in 2006, which confirmed the presence of PCBs with concentrations > 50 ppm in three localized hot spots in the river sediments;
- a 220 ppm PCB concentration detected in 2006 in the river sediment;
- previously collected data that indicated that bank soils and floodplains contained areas with PCB concentrations > 50 ppm;
- information that demonstrated significant uncontrolled erosion is occurring at the Plainwell Impoundment that causes undercutting of contaminated banks that then fall into the river; and
- the fact that the Plainwell Impoundment is the first, most upstream significant source of PCBs to the Kalamazoo River, and it is important to remove this material from the river as soon as possible to eliminate the most upstream source of PCB to the River.

The 2006 data regarding mid-channel hot spots raised serious concerns at U.S. EPA and MDEQ. Before 2006, the PRPs had collected in-stream sediment data along "transects," *i.e.* in a straight line from one river bank to another. Until 2006, PCB concentrations in mid-stream sediments appeared to be relatively and uniformly low. The new data indicated that there were "hot spots" of high PCB concentrations between the transects. During the mediation, the PRPs agreed to conduct the TCRA at the Plainwell Impoundment. Additionally, the PRPs agreed to evaluate whether performance of the removal action would be facilitated by removal of the Plainwell Dam. The Plainwell Dam is in poor condition, and the Michigan Department of Natural Resources, a mediating party, is currently under an order to repair, replace or remove the dam, and prevent access by unauthorized persons. The agreement among Millennium Holdings, LLC, Georgia-Pacific, LLC, U.S. EPA and the State of Michigan was captured in a legal document called an Administrative Settlement Agreement and Order on Consent. U.S. EPA and the PRPs held settlement negotiations to reach the agreement, and the public does not participate in U.S. EPA's settlement negotiations.

U.S. EPA's regulations at 40 C.F.R. § 300.415(n) explain how U.S. EPA should interact with the community when a removal action is taken. U.S. EPA is following the

requirements of the regulations and is committed to meeting with public officials and citizens to listen to concerns and respond appropriately. The public will have an opportunity to comment on the final cleanup action for the Allied Paper Landfill, as well as final cleanup decisions for other areas of the River, through the Superfund remedy selection process. U.S. EPA will not conduct TCRA's at the Kalamazoo River Superfund Site in the future unless there is data and information that supports a need to take another TCRA.

**#4. It Is Not Clear that the Allied Paper Landfill Meets the Substantive Requirements of TSCA.**

**Answer:** When U.S. EPA conducts a response action at a Superfund site, it is required to evaluate federal and state regulations and standards that are applicable or relevant and appropriate requirements (ARARs) to the cleanup action. The need to achieve or waive ARARs, however, differs for remedial actions and removal actions. Remedial actions must attain or waive ARARs. *See* 40 C.F.R. § 300.430(e)(9)(iii)(B). Removal actions must attain ARARs to the "extent practicable considering the exigencies of the situation...." *See* 40 C.F.R. § 300.415(j).

The TSCA chemical landfill requirements of 40 C.F.R. § 761.75 are not an ARAR for any response action at the Kalamazoo River Superfund Site. In 1999, U.S. EPA promulgated the PCB Remediation Waste Rule to address, in part, the disposal of large quantities of dredged material containing PCBs over 50 ppm. The new regulations regarding the disposal of PCB Remediation Waste are found at 40 C.F.R. § 761.61. This regulation creates a mechanism by which U.S. EPA may issue a risk-based disposal approval for PCB Remediation Wastes if it determines that the proposed disposal method does not pose an unreasonable risk of injury to health or the environment. The authority to issue a risk-based disposal approval has been delegated from the U.S. EPA Region 5 Regional Administrator to the Director of the Superfund Division, subject to a requirement for the Director of the Superfund Division to consult with the Waste, Pesticides & Toxics Division. U.S. EPA Region 5 Superfund Division has procedures in place that it follows to consult with the Waste, Pesticides & Toxics Division when it considers whether to approve risk-based disposal of PCB Remediation Waste.

When U.S. EPA finalizes the Feasibility Study for the Allied Paper Landfill, it will identify 40 C.F.R. § 761.61(c) as an ARAR for the remedial action. The permanent remedy for the landfill will need to comply with the TSCA ARAR. U.S. EPA has already issued risk-based disposal approval for permanent disposal (i.e. consolidation and capping) of PCB wastes at the 12<sup>th</sup> Street and the A-site Landfills, and for the disposal of the Bryant Mill Pond PCB residuals in the Allied Paper Landfill.

**ORC Answers to Items of Concern**

**1. Q: Why TCRA instead of Non-time critical/public input?**

**Answer:** Same as answer to #2 in Mayor's letter

**2. Q: “temporary” vs. permanent disposal at the Landfill?**

**Answer:** The placement of the PCB contaminated sediment from the Bryant Mill Pond and from the Plainwell Impoundment into the Allied Paper Landfill (Landfill) is considered “temporary” only in the sense the decision to place the materials in the Landfill is not a final cleanup decision. Legally, U.S. EPA cannot call disposal of materials “permanent” until a final cleanup decision is made to make the placement permanent. U.S. EPA publishes its final cleanup decisions in a Record of Decision (ROD). A final cleanup decision for the Landfill will be made in a ROD after the Remedial Investigation/Feasibility Study Report is finalized and after U.S. EPA makes the Proposed Plan for cleanup available for public comment.

U.S. EPA wants the public to know that, when it evaluates final cleanup alternatives for the Landfill, both U.S. EPA and MDEQ will consider an alternative that allows for the Plainwell Impoundment materials, along with the materials already at the Landfill (which include the Bryant Mill Pond TCRA materials and the one million cubic yards of material placed in the Landfill during the 1950s, 1960s, and 1970s) to remain in place. Final cleanup decisions have already been made for the other three landfills at the site: King Highway Landfill, 12<sup>th</sup> Street Landfill and Willow Blvd/A-site Landfill. The final cleanup decisions for all three landfills, which are also located adjacent to the Kalamazoo River and contain wastes similar to those located within the Allied Paper Landfill, were to contain the materials at the landfills in place. The decision documents, along with the Administrative Records for these landfills, are publicly available and can be informative on how U.S. EPA’s remedy selection criteria are evaluated for sites like the Allied Paper Landfill.

**3. Q: TSCA chemical landfill requirements?**

**Answer:** Same as answer to #4 in Mayor’s letter

**4. Q: technical data used to support a TSCA waiver for placement of material in Allied Paper Landfill?**

**Answer:** The Regional Administrator of U.S. EPA Region 5 did not grant a waiver from TSCA regulations to dispose of the Plainwell Impoundment materials in the Allied Paper Landfill. Use answer to #4 in Mayor’s letter to respond to further respond to this question.

**Allied Paper, Inc./Portage Creek/Kalamazoo River  
Superfund Site**

**Issues of Concern**

1. The action taken by EPA on this site has been defined as "Time Critical Removal". EPA's own guidance states that "Time-Critical Removal" should be used when the removal of the hazardous substance must be removed within 6 months or less. The PCB contaminated sediment has been resident in the river for a significant amount of time. There is no pertinent data to suggest that the project could not have proceeded under "Non-Time Critical" methods. As such, there would have been greater opportunities for public input and outreach by EPA and MDEQ. It is understood that the decision to use the Allied Paper disposal site was made without input from the public or the City of Kalamazoo. What commitments are the EPA and MDEQ willing to make to assure that all future decisions will be made in a more open manner that would allow comment by the public and affected governmental units?
2. The agencies have defined the 'temporary' Allied Disposal Area as suitable for use as a 'long-term' landfill site for PCB-contaminated site. City officials were told during the initial cleanup of Bryant mill pond (1998) that on site placement of PCB contaminated sediment would only be "temporary"; it is now likely that the contaminated sediment will remain at the Allied site indefinitely.
3. If contaminated sediments are to remain at the Allied Paper Landfill, the site needs to meet chemical landfill standards per federal regulations. *(TSCA landfills are defined as chemical waste landfills designed and constructed to comply with the provision of TSCA regulations. Those requirements include a requirement to locate in thick, relatively impermeable formations or to provide a 3-foot thick compacted clay liner with permeability less than  $1 \times 10^{-7}$  cm/sec. A flexible membrane liner system may be substituted for the clay liner. The bottom of the site must be at least 50 feet above the historical high water table. Groundwater monitoring and leachate collection systems are also required. Also, materials containing free-draining liquids cannot be placed in the landfill for final disposal.)*
4. What technical criteria were considered to convince the Regional Administrator to grant a waiver from the Allied Disposal site from meeting the technical standards normally applied to all TSCA landfills? The City of Kalamazoo would like to have an opportunity to review the technical submittal supporting that decision. Conversely, what are the relevant site data and records used to demonstrate that the Allied Paper disposal meets the applicable technical criteria? How might the City of Kalamazoo staff obtain copies of this data?
5. The Allied disposal site is located within the 5-Year Capture Zone of the MDEQ-approved wellhead protection program (WHPP). Locating such a disposal site is contrary to the purpose of the WHPP to minimize risk to groundwater-based public water supply systems.

6. Both EPA and MDEQ have asserted that the disposal site poses no long term adverse risk to the groundwater should the sediments (from 1998 & 2007) remain indefinitely, yet have not provided any scientific information, such as groundwater modeling, particularly reflecting multiple area wellfield operation, to support that premise.
7. What are the construction details for the OU-1 monitoring wells? What is the total number of monitoring wells? What was the construction methods used for well construction? What are the screened intervals? Is each of the water bearing formations monitored, in particular, the formation where City of Kalamazoo drinking water production wells have been completed?
8. It is our understanding that the Allied Disposal site has a number of groundwater monitoring wells. It also understood that there has been some surface water sampling of Portage Creek subsequent to the 1998 removal action. However, neither EPA nor MDEQ has provided any site surface and/or groundwater monitoring data, when requested.
9. There is no indication that groundwater action levels have been considered for OU-1. For example, what actions will be taken should PCBs be detected in groundwater samples? What contingency plans will be in place to assure the City of Kalamazoo that groundwater contamination will be controlled should it be detected in downgradient monitoring well samples.
10. There has been an apparent lack of consideration of alternative dewatering and/or disposal methods, such as those to be implemented in the Lower Fox River Wisconsin Superfund Site, which also addresses PCB contaminated sediment. At this site the following were implemented:
  - a. Mechanical dewatering in lieu of passive dewatering to ensure that sufficiently high solids contents are achieved for disposal
  - b. Disposal of PCB sediment at concentrations <50ppm at a state-permitted type II landfill
  - c. Disposal of sediment at PCB concentrations >50 PPM at an engineered, TSCA permitted landfill (EQ Landfill, Belleville, Michigan).

Was the use of a MDEQ permitted, Type II Landfill considered for disposal of PCB-contaminated sediment with PCB concentrations < 50 ppm?

11. The proposed method of 'dewatering' is passive in nature and appears to be less efficient than using some type of mechanical dewater process. The proposed methods of dewater call for the use of both uncontaminated soils and Portland cement as a solidification agent. It is not clear what criteria will be used to determine when and how much Portland Cement is to be used. Also, there is no indication of what process control methods, other than the paint filter test, will be used with the 'passive' dewatering system. This strategy will, by its very nature not remove as much water from the sediment as mechanical methods. The disposal area may, as a result,



produce more leachate, particularly as the sediment is disposed at the proposed lift heights.

12. What provisions will be in place to monitor dust leaving the site as trucks drive on and off the site; and while sediment disposal is taking place. The disposal site is located within a rather heavily populated residential and commercial area. An air monitoring plan (as part of a Health and Safety Plan) would provide for such monitoring. There is no indication that one has been prepared for this site.
13. The construction quality assurance plan has not been completed, yet the construction activity has apparently already started.
14. How will erosion of PCB-contaminated sediments in the Allied Paper Disposal site be prevented? The City of Kalamazoo is the authorized agent for administering the Soil Erosion and Sedimentation Control Act within the City. The work on the Allied disposal site should meet the substantive requirements of these regulations. Have these requirements been discussed with City of Kalamazoo staff?
15. It is understood that the Remedial Investigation Report for OU-1 has been submitted to EPA. With the completion of the Feasibility Study and the subsequent Record of Decision to be completed at some future date, it appears a significant amount of time could pass prior to knowing what remedial action would be taken on the disposal site. Apparently, there is no timeline in place for the completion these documents, so it's possible to conclude from this that the agencies would like to consider use of the Allied Disposal site for the future repository of additional PCB-contaminated sediment from the additional downstream segments of the Kalamazoo River. The City of Kalamazoo prefers that the Record of Decision for OU-1 be given the highest of priorities. Not only is the City of Kalamazoo in opposition to the long-term disposal of PCB-contaminated sediment from the Bryant Mill Pond remedial action and the Plainwell Impoundment area, but we are in disagreement with the agencies of leaving the final resolution of any remedial action on OU-1 open until the entire stretch of the river is remediated.
16. Furthermore, since this site has direct impact on City of Kalamazoo residential and commercial development, we request that City of Kalamazoo staff be allowed to review pertinent data and have an opportunity to review draft reports such as the Remedial Investigation/Feasibility Study, Record of Decision, etc.
17. A number of plans related to the disposal of sediment at the Allied Paper Disposal Site have not yet been made available for review. Those include, the Construction Quality Assurance Plan, Air Monitoring Plan, Sampling Plan, Traffic Control Plan and Health and Safety Plan. The City of Kalamazoo would like to have an opportunity to review these documents, as each becomes available.
18. What will be the financial assurance measures to be in place to assure funds will be there to do necessary site maintenance, monitoring, and corrective action, if needed.

19. Look at options to enhance the Allied Paper Landfill and Bryant Mill pond site, e.g., wildlife refuge, limited public access, clean-up of all the surrounding contaminated and Brownfield Sites, such as the old Performance Paper mill site.